

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF NEW YORK**

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**JAMEL DEWITT and MARQUESE HILL,**

**Plaintiffs,**

**COMPLAINT**

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**-against-**

**JURY DEMANDED**

**CITY OF TROY; Troy Police Officers WILLIAM BOWLES, STEPHEN SENEY, JEFFREY HOOVER and WILLIAM O'NEIL, Individually and as agents, servants and/or employees of the City of Troy; JOHN DOE and RICHARD ROE, whose names are presently unknown, Individually and as agents, servants and/or employees of the City of Troy,**

**Defendants.**

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Plaintiffs, Jamel Dewitt and Marquese Hill, by their attorneys, KINDLON SHANKS & ASSOCIATES, respectfully submit the following:

**INTRODUCTION AND JURISDICTION**

1. This is an action at law to redress the deprivation by the Defendants, acting under color of statute, ordinance, regulation, custom, and/or usage, of a right, privilege or immunity secured to the Plaintiffs by the Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the Constitution of the United States of America with intent to deny Plaintiffs their civil rights, all of which arise under federal law, particularly Title 42 U.S.C. sections 1982, 1983, 1985, and 1988, and the Constitutions, Laws and Statutes of the United States and the State of New York; additionally, Plaintiffs assert common law causes of action for false arrest, false imprisonment, assault and battery. Notices of Claim under New York General Municipal Law section 50-e were timely served upon the municipal defendants and hearings, pursuant to General Municipal Law

section 50-h, have been conducted.

2. The jurisdiction of this court is invoked under the following statutes:

A. 28 U.S.C. Section 1331, and

B. 28 U.S.C. Section 1343(3).

### **THE PARTIES**

3. At all times relevant, Plaintiff **JAMEL DEWITT** was and is a resident of the City of Troy and County of Rensselaer, State of New York, in the Northern District of New York.

4. At all times relevant, Plaintiff **MARQUESE HILL** was and is a resident of the City of Troy and County of Rensselaer, State of New York, in the Northern District of New York.

5. At all times relevant Defendant **CITY OF TROY** was and is a municipal corporation within the County of Rensselaer, State of New York, in the Northern District of New York, and was the employer of the various named and unnamed members of the Troy Police Department designated as Defendants herein.

6. At all times relevant the Defendants **WILLIAM BOWLES, STEPHEN SENEY, JEFFREY HOOVER** and **WILLIAM O'NEIL**, Troy Police Officers, were agents, servants, and/or employees of the City of Troy, employed by the Troy Police Department and were acting in their individual and official capacities under the color of state law and within the scope of their employment.

7. At all times relevant the Defendants **JOHN DOE** and **RICHARD ROE**, Troy Police Officers, whose names are presently unknown, were agents, servants, and/or employees of the City of Troy, employed by the Troy Police Department and were acting in their individual and official capacities under the color of state law and within the scope of their employment.

8. At all times relevant Defendant **CITY OF TROY** failed to adequately train and/or supervise the individual employees of the Troy Police Department, named and unnamed, to avoid the common law torts and constitutional violations of the Plaintiffs' rights and resultant damages

described herein.

9. Each and all of the acts of the aforementioned Defendants concerning Plaintiffs were and are tortious, and were done in violation of state and federal law as well as constitutional principles, and were done under the color or pretense of the statutes, ordinances, regulations, customs, policies, and/or usages of the State of New York.

10. Plaintiffs sue each Defendant in his, her or its individual and/or official capacity.

### **THE FACTS**

11. The factual basis for this claim is as follows:

On or about January 18, 2008, at or about 9:10 pm, Jamel Dewitt, a 22-year-old black male was driving an automobile with passenger Marquese Hill, a 24-year-old black male, from Troy, New York to Albany, New York. In or near Menands, New York, the automobile was unlawfully stopped and both Mr. Dewitt and Mr. Hill were ordered out of the car onto the payment by two white undercover Troy police officers who made them get down on the ground. After they were on the ground, the Troy police officers struck Mr. Dewitt on his head, jaw, back, knees, legs and ankles and struck Mr. Hill on his head, neck and shoulders. Several other police officers stood by and did not intervene to stop the assault. The Plaintiffs were then falsely arrested by Troy police and falsely charged with certain criminal offenses, constituting a malicious prosecution under both federal and state law. After their false arrests Plaintiffs demanded to meet with legal counsel but they were denied this right by Defendant police officers.

12. As a result of the foregoing, the Plaintiffs **JAMEL DEWITT** and **MARQUESE HILL** suffered severe and permanent personal injuries, pain and suffering and intentional infliction of emotional harm and other items of damages.

13. As a result of the aforesaid acts of the Defendants, Plaintiffs **JAMEL DEWITT** and **MARQUESE HILL** were deprived of rights, privileges and/or immunities secured by the Constitution and laws of the United States and have been damaged thereby. The rights, privileges

and immunities deprived by Defendants include, but are not limited to:

- a. Right to freedom from unlawful search and seizure;
- b. Right to equal protection under the laws;
- c. Right to freedom from unlawful retention of personal property;
- d. Right to freedom from unlawful arrest and imprisonment;
- e. Right to substantive due process;
- f. Right to procedural due process;
- g. Right to freedom from use, and/or threatened use, of excessive force;
- h. Denial of liberty; and
- i. Right to counsel.

14. As a result of the aforesaid acts of Defendants, Plaintiffs **JAMEL DEWITT** and **MARQUESE HILL** have suffered damages, including but not limited to denial of constitutional and civil rights, severe and permanent personal injuries and pain and suffering and psychological trauma and other losses and damages.

**FIRST CAUSE OF ACTION:  
DENIAL OF LIBERTY/42 U.S.C. 1983**

15. Plaintiffs repeat and reallege paragraphs “1” through “14” and incorporate the same herein by reference.

16. As a result of the foregoing, Plaintiffs **JAMEL DEWITT** and **MARQUESE HILL** were subjected to a denial of liberty and were damaged thereby.

**SECOND CAUSE OF ACTION:  
UNLAWFUL SEARCH AND SEIZURE/42 U.S.C. 1983**

17. Plaintiffs repeat and reallege paragraphs “1” through “16” and incorporate the same herein by reference.

18. As a result of the foregoing, Plaintiffs **JAMEL DEWITT** and **MARQUESE HILL** were subjected to denial of their Fourth Amendment right to be free from unlawful search and

seizure and were damaged thereby.

**THIRD CAUSE OF ACTION:  
EXCESSIVE FORCE/42 U.S.C. 1983**

19. Plaintiffs repeat and reallege paragraphs “1” through “18” and incorporate the same by reference herein.

20. As a result of the foregoing, Plaintiffs **JAMEL DEWITT** and **MARQUESE HILL** were subjected to excessive force and were damaged thereby.

**FOURTH CAUSE OF ACTION:  
MALICIOUS PROSECUTION /42 U.S.C. 1983**

21. Plaintiffs repeat and reallege paragraphs “1” through “20” and incorporate the same by reference herein.

22. As a result of the foregoing, Plaintiffs **JAMEL DEWITT** and **MARQUESE HILL** were subjected to malicious prosecution and were damaged thereby.

**FIFTH CAUSE OF ACTION:  
COMMON LAW FALSE ARREST AND IMPRISONMENT**

23. Plaintiffs repeat and reallege paragraphs “1” through “22” and incorporate the same herein by reference.

24. As a result of the foregoing, Plaintiffs **JAMEL DEWITT** and **MARQUESE HILL** were subjected to common law false arrest and imprisonment and were damaged thereby.

**SIXTH CAUSE OF ACTION:  
COMMON LAW ASSAULT AND BATTERY**

25. Plaintiffs repeat and reallege paragraphs “1” through “24” and incorporate the same herein by reference.

26. As a result of the foregoing, Plaintiffs **JAMEL DEWITT** and **MARQUESE HILL** were subjected to common law assault and battery and were damaged thereby.

**SEVENTH CAUSE OF ACTION:  
COMMON LAW MALICIOUS PROSECUTION**

27. Plaintiffs repeat and reallege paragraphs "1" though "26" and incorporate the same herein by reference.

28. As a result of the foregoing, Plaintiffs **JAMEL DEWITT** and **MARQUESE HILL** were subjected to common law malicious prosecution and were damaged thereby.

**DEMAND FOR RELIEF**

**WHEREFORE**, Plaintiffs demand judgment against the Defendants as follows:

- a) As and for the first cause of action, Plaintiffs demand judgment against the Defendants in an amount to be determined by a jury.
- b) As and for the second cause of action, Plaintiffs demand judgment against the Defendants in an amount to be determined by a jury.
- c) As and for the third cause of action, Plaintiffs demand judgment against the Defendants in an amount to be determined by a jury.
- d) As and for the fourth cause of action, Plaintiffs demand judgment against the Defendants in an amount to be determined by a jury.
- e) As and for the fifth cause of action, Plaintiffs demand judgment against the Defendants in an amount to be determined by a jury.
- f) As and for the sixth cause of action, Plaintiffs demand judgment against the Defendants in

an amount to be determined by the jury.

g) As and for the seventh cause of action,  
Plaintiffs demand judgment against the  
Defendants in an amount to be determined by  
the jury.

h) Punitive damages in an amount to be  
determined by a jury.

All for a total demand for judgment in an amount to be determined by a jury, together  
with interest, counsel fees pursuant to Title 42 U.S.C. § 1988, and the costs and disbursements  
of this action.

Dated: January 2, 2009

KINDLON SHANKS & ASSOCIATES

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